

CHAPTER 31
(CORRECTED COPY)

AN ACT requiring health insurance coverage and supplementing Title 54A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.54A:11-1 Short title.

1. This act shall be known and may be cited as the “New Jersey Health Insurance Market Preservation Act.”

C.54A:11-2 Definitions relative to required health insurance coverage.

2. As used in this act:

“Affordable Care Act” means the federal “Patient Protection and Affordable Care Act,” Pub.L.111-148, as amended by the federal “Health Care and Education Reconciliation Act of 2010,” Pub.L.111-152, and any federal rules and regulations adopted pursuant thereto.

“Applicable individual” means the same as defined in 26 U.S.C. s.5000A(d)(1).

“Carrier” means any entity that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a hospital or health service corporation, a multiple employer welfare arrangement, an entity under contract with the State Health Benefits Program or the School Employees’ Health Benefits Program to administer a health benefits plan, or any other entity providing a health benefits plan.

“Minimum essential coverage” means the same as defined in 26 U.S.C. s.5000A(f)(1).

C.54A:11-3 Minimum essential coverage.

3. a. A taxpayer shall, for each month beginning after December 31, 2018, ensure that the taxpayer, if an applicable individual, and any dependent of the taxpayer who is an applicable individual, is covered under minimum essential coverage for that month.

b. In the case of any taxpayer who fails to meet the requirements of subsection a. of this section, there shall be imposed a State shared responsibility tax equal to a taxpayer’s federal penalty that would apply for the taxable year under section 5000A of the Internal Revenue Code of 1986, as in effect on December 15, 2017 (26 U.S.C. s.5000A).

C.54A:11-4 Rules for determination of State shared responsibility.

4. The rules for determining the State shared responsibility tax under section 3 of this act shall reflect the following changes relative to the rules for determining the federal shared responsibility payment under 26 U.S.C. s.5000A:

a. The amount of the tax imposed by this act shall be determined, if applicable, using the State average premium for bronze-level plans rather than the national average premium for bronze-level plans;

b. Instead of the United States Secretary of Health and Human Services, in coordination with the United States Secretary of the Treasury, the Commissioner of Banking and Insurance, in coordination with the State Treasurer, shall have the authority to recognize additional health benefits coverage as “minimum essential coverage”;

c. For purposes of the exemption for individuals who cannot afford coverage:

(1) the required contribution is as follows:

(a) for an individual eligible for minimum essential coverage under both an eligible employer-sponsored plan and a qualified health plan the lesser of the amounts described in 26 U.S.C. s.5000A(e)(1)(B)(i) and 26 U.S.C. s.5000A(e)(1)(B)(ii);

(b) for an individual only eligible for minimum essential coverage under a qualified health plan the amount described in 26 U.S.C. s.5000A(e)(1)(B)(ii);

(2) the income threshold for coverage to be considered unaffordable shall be determined by the State Treasurer in a manner consistent with 26 U.S.C. s.5000A (e)(1);

d. No tax shall be imposed under this act with respect to any applicable individual for any month during a calendar year if the taxpayer's taxable income for the taxable year is below the minimum taxable income threshold established in N.J.S.54A:2-4 and N.J.S.54A:8-3.1;

e. No tax shall be imposed by this act with respect to any applicable individual for any month during which the individual is a nonresident taxpayer;

f. Determinations as to hardship exemptions shall be made by the State Treasurer under this act rather than by the U.S. Secretary of Health and Human Services under 42 U.S.C. s.18031(d)(4)(H);

g. If a taxpayer is subject to both the tax imposed by this act and the federal penalty under 26 U.S.C. s.5000A for a taxable year, the taxpayer shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in the amount of the taxpayer's federal penalty payment, but not to exceed the amount of the taxpayer's State tax imposed by this act in the taxable year.

The order of priority of the application of the tax credit allowed pursuant to this subsection and any other tax credits allowed by law shall be as prescribed by the Director of the Division of Taxation. The amount of the tax credit applied under this subsection against the tax otherwise due under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., for a taxable year, when taken together with any other payments, credits, deductions, and adjustments allowed by law, shall not reduce the tax liability of the taxpayer to an amount less than zero; and

h. Health coverage provided under a multiple employer welfare arrangement, as defined in subsection (40) of 29 U.S.C. s.1002, shall not qualify as minimum essential coverage unless the plan complies with the requirements of one or more of the following New Jersey statutes, as applicable to a carrier and health benefits plans offered in the relevant individual, small employer, or large employer markets:

- (1) P.L.1938, c.366 (C.17:48-1 et seq.);
- (2) P.L.1940, c.74 (C.17:48A-1 et seq.);
- (3) P.L.1985, c.236 (C.17:48E-1 et seq.);
- (4) N.J.S.17B:26-1 et seq.;
- (5) N.J.S.17B:27-26 et seq.;
- (6) P.L.1973, c.337 (C.26:2J-1 et seq.);
- (7) P.L.1992, c.161 (C.17B:27A-2 et seq.);
- (8) P.L.2001, c.352 (17B:27C-1 et seq.);
- (9) P.L.1997, c.1972 (C.26:2S-1 et seq.); or
- (10) P.L.1992, c.162 (C.17B:27A-17 et seq.).

i. For any taxable year in which federal premium tax credits, available pursuant to 26 U.S.C. s.36B, enacted as part of the federal "Patient Protection and Affordable Care Act," Pub.L.111-148, as amended by the "Health Care and Education Reconciliation Act of 2010," Pub.L.111-152 (ACA), become unavailable due to the federal government repealing that section or failing to fund the premium tax credits, the State shared responsibility tax under this act shall not be enforced.

C.54A:11-5 Assessment, collection of tax.

5. a. The tax imposed by this act shall be assessed and collected in the same manner as under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.; provided, however, that any funds collected pursuant to this act shall not be gross income tax revenue for purposes of N.J.S.54A:9-25.

b. Any funds collected pursuant to this act shall be deposited in the New Jersey Health Insurance Premium Security Fund created pursuant to P.L.2018, c.24 (C.17B:27A-10.1 et seq.). If the Commissioner of Banking and Insurance does not establish a health insurance reinsurance plan pursuant to P.L.2018, c.24 (C.17B:27A-10.1 et seq.), the funds collected pursuant to this act shall be deposited in the Health Care Subsidy Fund established pursuant to section 8 of P.L.1992, c.160 (C.26:2H-18.58), which may be used to improve and expand children's health insurance in the NJ FamilyCare Program, established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), and, to the extent possible, to maximize federal funding under Title XXI of the federal Social Security Act, subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury.

C.54A:11-6 Regulations.

6. a. Except as otherwise provided in this section, any federal regulations implementing 26 U.S.C. s.5000A, as that section and those regulations are in effect on December 15, 2017, shall apply as though incorporated into this act. Federal guidance interpreting these federal regulations shall similarly apply.

b. The State Treasurer shall adopt regulations implementing this section, which shall include modifications necessary to reflect the differences between this act and 26 U.S.C. s.5000A, and other differences between the "New Jersey Gross Income Tax Act" and the Internal Revenue Code of 1986.

c. All references in this act to any of the provisions of 26 U.S.C. s.5000A shall be to that provision as in effect on December 15, 2017.

C.54A:11-7 Program to determine eligibility for exemption.

7. a. The State Treasurer shall establish a program for determining whether to grant a certification that an individual is entitled to an exemption from either the individual responsibility requirement pursuant to subsection a. of section 3 of this act or the tax imposed pursuant to subsection b. of section 3 of this act by reason of religious conscience or hardship.

b. The State Treasurer shall make the determination whether to grant an exemption pursuant to this section and shall notify the individual granted an exemption.

C.54A:11-8 Findings relative to required health insurance coverage.

8. a. The Legislature finds that:

(1) The reporting requirement provided for in this section is necessary for the successful implementation of the tax imposed by this act. In particular, this requirement provides the only widespread source of third-party reporting to help taxpayers and the State Treasurer verify whether an applicable individual maintains minimum essential coverage. There is compelling evidence that third party reporting is crucial for ensuring compliance with tax provisions.

(2) The tax imposed by this act, and therefore the reporting requirement in this section, is necessary to protect the compelling State interest of protecting the health and welfare of its residents.

(3) The tax imposed by this act, and therefore the reporting requirement in this section, is necessary to protect the compelling State interest of fostering economic stability and growth in the State.

(4) The tax imposed by this act, and therefore the reporting requirement in this section, is necessary to protect the compelling State interest of ensuring a stable and well-functioning health insurance market. There is compelling evidence that, without an effective tax in place for those who go without coverage, there would be substantial instability in health insurance markets, including higher prices and the possibility of areas without any insurance available. Ensuring the health of insurance markets is a responsibility reserved for states under the McCarran-Ferguson Act and other federal law.

(5) The reporting requirement in this section has been narrowly tailored to support compliance with the tax imposed by this act while imposing only an incidental burden on reporting entities. In particular, the information that must be reported is a subset of the information that must already be reported under a similar federal reporting requirement under 26 U.S.C. s.6055. In addition, this section provides that its reporting requirement may be satisfied by providing the same information that is currently reported under that federal requirement.

b. For purposes of administering the tax on individuals who fail to maintain minimum essential coverage under section 3 of this act, every applicable entity that provides minimum essential coverage to an individual during a calendar year shall, at the time the State Treasurer prescribes, make a return described in subsection c. of this section. In a manner consistent with requirements under 26 U.S.C. s.6055, a copy of the return shall be provided to the individual and the State Treasurer.

c. (1) Except as provided in paragraph (2) of this subsection, a return shall be in such form as the State Treasurer may prescribe, and contain the name, address and Social Security number or taxpayer identification number of the primary insured and the name and Social Security number or taxpayer identification number of each other individual obtaining coverage under the policy, the dates during which that individual was covered under minimum essential coverage during the calendar year, and such other information as the State Treasurer may require.

(2) Notwithstanding the requirements of paragraph (1), a return shall not fail to be a return described in this section if it includes the information contained in a return described in 26 U.S.C. s.6055, as that section is in effect and interpreted on December 15, 2017.

(3) In the case of coverage provided by an applicable entity that is any governmental unit or any agency or instrumentality thereof, the officer or employee who enters into the agreement to provide that coverage, or a person appropriately designated for purposes of this section, shall be responsible for the returns and statements required by this section. An applicable entity may contract with third-party service providers, including insurance carriers, to provide the returns and statements required by this section.

d. As used in this section:

“Applicable entity” shall include the following:

(1) An employer or other sponsor of an employment-based health plan with respect to employment-based minimum essential coverage.

(2) The Department of Human Services with respect to the NJ FamilyCare Program.

(3) Carriers licensed or otherwise authorized to offer health coverage with respect to coverage they provide that is not described in paragraph (1) or (2) of this subsection.

9. Not earlier than November 1 nor later than November 30 of each year, the State Treasurer, in consultation with the Commissioner of Banking and Insurance, shall send a notification to each taxpayer who files a gross income tax return indicating if the taxpayer or one of the taxpayer's dependents is not enrolled in minimum essential coverage as required by this act. That notification shall contain information on the services available to obtain coverage, including through the federally-facilitated health insurance Exchange established pursuant to the Affordable Care Act.

C.54A:11-10 Rules, regulations.

10. The State Treasurer, in consultation with the Commissioner of Banking and Insurance shall adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), in order to effectuate the purposes of this act.

11. This act shall take effect on January 1, 2019, but the State Treasurer and Commissioner of Banking and Insurance may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

Approved May 30, 2018.